

### **REMARKS**

In this application, claims 1-35 are rejected under 35 U.S.C. § 103 (a). Claims 1-21 have been canceled, and claims 22-35 are original.

#### **Changes to the Claims:**

Claims 1-21 have been canceled without prejudice. No new matter has been added herein.

#### **Rejection under 35 U.S.C. § 103:**

Claims 1-35 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Elliott et al. (U.S. Patent No. 6,614,781, hereafter Elliott). Claims 1-21 have been canceled without prejudice and are therefore not addressed further herein.

Claim 22 recites the feature “wherein said step of implementing call setup within said packet switched data network is carried out after information on a resources status in the second telephony network is available” (emphasis added). Elliott does not disclose this feature. Applicant asserted the patentability of this feature in the reply filed July 9, 2008. However, the Office Action of October 17, 2008 does not address the limitations of claim 22. Applicant therefore respectfully requests that the Examiner take note of the remarks relating to claims 23-35, as required by M.P.E.P. § 707.07(f), so that Applicant may have a full and fair opportunity to reply.

As stated above, Elliott does not disclose the above-quoted feature of claim 22. Moreover, the discussion and illustration of call flow operation in Elliott specifically contradicts the above-discussed feature of claim 22. The call flow of Elliott is discussed below.

Figures 22A through 22C and corresponding portions of the specification of Elliott address the call flow operation of Elliott in varying levels of detail. Reference is made to Figure 22A in the following. Since Figures 22B and 22C merely show the same method in greater detail, these additional figures are not discussed in detail herein.

Figure 22A shows a sequence of steps from step 2202 to step 2230 with the order of the steps indicated by the arrows. Attention is directed in particular to steps 2222 and 2226. Step 2222 recites selecting a route and allocating a terminating circuit. As discussed in col. 20, lines 58-65, step 2222 addresses route selection through a data network, either data network 112 (Figure 1), or other data network. Step 2226 includes instructing gateway sites to make connections to set up the call. As discussed in col. 21, lines 3-10 of Elliott, the call setup of step 2226 refers to establishing the

connections to calling party 102 and called party 120. It is noted that party 120 is connected to gateway site 110 by a traditional PSTN telephone network (see col. 18, lines 26-28 of Elliott).

Thus, a review of the order of events in Figure 22A indicates that Elliott discloses setting up the routing of a call within its data network (step 2222) before implementing call setup across the first and second telephony networks that connect to the data network (step 2226). This order of steps plainly contradicts the order of steps recited in claim 22. Therefore, the method disclosed in Elliott, and illustrated in Figure 22A, does not disclose, and in fact specifically teaches away from the features recited in claim 22. Based on the foregoing, the method of claim 22 is not obvious over Elliott. Claim 22 is therefore patentable over Elliott under 35 U.S.C. § 103 (a). Claims 23-35 depend from claim 22, inherit all the limitations thereof, and are therefore patentable over Elliott for the same reasons as claim 22. Accordingly, all pending claims 22-35 are allowable.

**Conclusion:**

The present application is considered to be in condition for allowance. The Examiner is invited to call the undersigned if it is believed a discussion would be helpful in advancing the prosecution of the application. It is believed that no fees are due. However, the Examiner is authorized to deduct any fees believed due from, or to refund any overpayments to, Deposit Account No. 50-4711.

Respectfully submitted,

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